

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

Policy and Rules Concerning)
Interstate, Interexchange Marketplace)

CC Docket No. 96-61

Implementation of Section 254(g) of the)
Communications Act of 1934, as amended)

1998 Biennial Regulatory Review –)
Review of Customer Premises Equipment)
and Enhanced Services Unbundling Rules)
in the Interexchange, Exchange Access,)
and Local Exchange Markets)

CC Docket No. 98-183

**REPLY COMMENTS OF
KMC TELECOM, INC.**

KMC Telecom, Inc. ("KMC") respectfully submits the following reply comments in the
above captioned proceedings.³ KMC submitted initial comments in this proceeding.⁴

³ *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Further Notice of Proposed Rulemaking, CC Docket No. 96-61, FCC 98-258, released October 9, 1998 ("NPRM").

⁴ Comments of KMC Telecom, Inc. submitted November 23, 1998.

I. THE RECORD SUPPORTS PERMITTING BUNDLING BY NON-DOMINANT CARRIERS

In its initial comments, KMC explained that the concerns that caused the Commission to adopt its bundling prohibition are not applicable to non-dominant providers of telecommunications services.⁵ Thus, non-dominant carriers, by definition, lack the market power that would enable them to harm competitors by discriminating in provision of basic telecommunications services or to compel customers to purchase unwanted information services or CPE because competitors and customers may obtain telecommunications service from other providers. Accordingly, the underpinnings that supported adoption of the bundling prohibition are not applicable to non-dominant carriers and it should be eliminated for them.

The comments filed in this proceeding fully support this position. Few commenters opposed permitting bundling by non-dominant carriers.⁶ No commenter submitted any factual basis supporting a conclusion that non-dominant carriers would possess the ability to engage in conduct that could support continued application of bundling prohibitions to them. While America Online apparently opposes any change in bundling rules for any carriers, it makes no attempt to separately analyze differences in the ability of dominant and non-dominant carriers to engage in the types of conduct the Commission was concerned about. Similarly, other commenters rely only on generalized allegations that non-dominant carriers should not be

⁵ KMC Comments at 2.

⁶ See e.g., Nationwide Business Telephone Systems, LLC. d/b/a Team Centrex Comments at 2; Consumer Electronics Manufacturers Association at 8; American Online at 9.

permitted to bundle without regulatory restrictions.⁷ Therefore, these general requests that current rules be maintained should not be given significant weight in evaluating whether non-dominant carriers should be permitted to bundle. On the whole, to the extent commenters are opposed to unbundling it is based on concerns of potential abuses by carriers that possess market power, not by non-dominant carriers.⁸ The record also shows widespread support for elimination of bundling restrictions for non-dominant carriers.⁹ Therefore, KMC submits that the record supports removing the prohibition on bundling for non-dominant carriers.

KMC urges the Commission to reject requests to permit non-dominant carriers to offer a bundled package of telecommunications service and information service and/or CPE only if they separately offer the components of the package on an unbundled basis, as apparently envisioned by some commenters for some or all carriers.¹⁰ This requirement would serve no useful purpose if applied to non-dominant carriers. As stated, non-dominant carriers, by definition, lack the ability to compel customers to purchase unwanted bundled offerings or to effectively discriminate against competitors in provision of telecommunications services. Thus, customers and competing service providers may obtain service from other carriers if they are not satisfied with the offerings of a non-dominant carrier.

⁷ Consumer Electronics Manufacturers Association Comments at 9.

⁸ Internet Service Providers' Consortium Comments at 5; America Online Comments at 10.

⁹ See e.g., KMC Comments at 2; Ohio PUC Comments at 2, 8; Comptel Comments at 2; AT&T Comments at 4, 15; Sprint Comments at 2.

¹⁰ Consumer Manufacturer Electronics Association Comments at 8.

The Commission should also reject the argument, as far as non-dominant carriers are concerned, that permitting unbundling without also separately offering the components of the package would constitute a re-regulation of CPE and information services and otherwise create a regulatory administrative nightmare for carriers and regulators. As previously discussed by KMC,¹¹ non-dominant carriers are not subject to any economic or rate regulation at the federal level, and rarely at the state level. Therefore, as a practical matter, bundling by non-dominant carriers would not constitute a re-regulation of CPE or information services. Nor would there be any need to regulate these carriers in order to protect against cross-subsidization since, as non-dominant carriers, they lack the ability to cross-subsidize to the detriment of consumers or competitors.

KMC emphasizes that permitting bundling by non-dominant carriers could benefit consumers by enabling these carriers to create useful service packages that would increase the range of choices available to consumers. Permitting packages of services can enable carriers to offer consumers reduced prices that reflect savings in transaction costs in that it would not be necessary for carriers to provide for separate provision, marketing, and billing of services. At the same time, a prohibition on bundling by non-dominant carriers would not serve any useful regulatory purpose and is, therefore, an unnecessary regulatory burden.

Accordingly, KMC urges the Commission to determine that non-dominant providers of telecommunications services may offer CPE and information services on a bundled basis with telecommunications service.

¹¹ KMC Comments at n. 10.

II. THE RECORD ALSO SHOWS THAT INCUMBENT LECs SHOULD NOT BE PERMITTED TO BUNDLE

KMC urges the Commission to reject requests by incumbent LECs that they be permitted to bundle.¹² Comments by incumbent LECs do not provide any basis for concluding that the bundling prohibition should not be applicable to them. Incumbent LECs provide only vague arguments that the local exchange market is sufficiently competitive for the Commission to abandon with respect to incumbent LECs any concern about their ability to engage in anticompetitive conduct.¹³ These allegations are unsupported by any factual showing that could rebut the overwhelming factual circumstance, as pointed out by KMC in its initial comments, that incumbent LECs continue to serve the huge majority of local service customers.¹⁴ Until such time as incumbent LECs are found to be non-dominant in provision of local service they will continue to possess market power and have the incentive and ability to engage in the conduct that formed the underpinning the Commission's unbundling prohibition.

Incumbent LEC arguments that they should be permitted to bundle because the CPE and information services markets are fully competitive simply miss the point.¹⁵ It is incumbent LEC's possession of market power with respect to their provision of local telecommunications

¹² SBC Comments at 5; US West at 9; Cincinnati Bell at 2; USTA Comments at 2; Ameritech Comments at 10; Bell Atlantic Comments at 15.

¹³ See e.g., SBC Comments at 6, 8; Bell Atlantic Comments at 3.

¹⁴ KMC Comments at . Collectively, CLECs captured 5.1% of the business market for local telecommunications services in 1997. *United States Competitive Local Markets*, Strategis Group (1998). In 1996 the CAP/CLEC share of nationwide local service revenues, including local exchange and access services, was 1%. Industry Analysis Division, Telecommunications Industry Revenue: TRS Fund Worksheet Data (rel. Nov. 1997).

¹⁵ Bell Atlantic Comments at 7; Ameritech Comments at 17.

services that enables them to disadvantage competitors or compel subscribers to purchase CPE or information services they may not want. Therefore, the Commission should not accord any weight to the existence of competition in the CPE and information services markets.

KMC also urges the Commission not to give any weight to incumbent LECs' arguments that it would be inequitable to maintain the bundling prohibition for them but not for non-dominant carriers.¹⁶ As explained by KMC in its initial comments, the Commission applies to incumbent LECs a range of regulation that it does not apply to competitive LECs by virtue of incumbent LECs' possession of market power.¹⁷ By contrast, the Commission has recognized that competitive LECs do not possess market power and there is no need to subject them to such regulation.¹⁸ Thus, permitting non-dominant carriers to bundle while not permitting incumbent LECs to do so would not be unfair to incumbent LECs since it is attributable to the incumbent LEC's continued possession of market power. At the same time, this would end the application of unnecessary regulation to non-dominant carriers.

Accordingly, KMC urges the Commission to maintain the prohibition on bundling by incumbent LECs.

¹⁶ See, e.g., SBC Comments at 7.

¹⁷ KMC Comments at 5.

¹⁸ *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges*, Report and Order, CC Docket Nos 96-262, 94-1, 91-213, and 95-72, 12 FCC Rcd 15982, para. 363 (1997) ("*Access Reform Report and Order*").

IV. CONCLUSION

For these reasons, KMC requests that the Commission permit non-dominant providers of interexchange and local exchange service to bundle CPE and enhanced services with telecommunications service and that it continue to prohibit bundling by incumbent LECs.

Respectfully submitted,



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Dated: December 23, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of December 1998, copies of the foregoing Comments of KMC Telecom, Inc. were served by hand delivery to the parties on the attached service list:

257189.1

A handwritten signature in cursive script, reading "Candice M. Pharr", written in dark ink over a horizontal line.

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